

III. REMARKS

Claims 1-2, 5-8, and 10-22 were pending in this application. By this amendment, claims 1, 8, 14, and 19 have been amended. Claims 1-2, 5-8, and 10-22 remain pending.

Applicant does not acquiesce in the correctness of the rejections and reserves the right to present specific arguments regarding any rejected claims not specifically addressed. Further, Applicant reserves the right to pursue the full scope of the subject matter of the original claims in a subsequent patent application that claims priority to the instant application. Reconsideration in view of the following remarks is respectfully requested.

Claims 8 and 10-13 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 19-22 are rejected under 35 U.S.C. 101 as being directed to non-statutory subject matter.

Claims 1-2, 5-8, and 10-22 are rejected under 35 U.S.C. 102(b) as allegedly being anticipated by Spiegel (US 6,466,918), hereinafter “Spiegel”.

A. REJECTION OF CLAIMS 8 AND 10-13 UNDER 35 U.S.C. 112, SECOND PARAGRAPH

The Office has stated that claims 8 and 10-13 are indefinite for failing to distinctly claim the subject matter of the claim. Specifically, regarding claim 8, the Office states that the limitation “the group of users” of line 12 of the claim lacks antecedent basis. (Office Action, Page 5). Applicant has herein amended the claim to remedy this. Accordingly, Applicant

respectfully requests that the rejection be withdrawn with regard to claim 8, as well as 10-13 which were presumably rejected on the same grounds.

B. REJECTION OF CLAIMS 19-22 UNDER 35 U.S.C. 101

The Office has stated that claims 19-22 are directed to non-statutory subject matter. Specifically, regarding claim 19, the Office states that the computer readable medium can be interpreted to include both transitory and non-transitory embodiments. (Office Action, Page 6). Applicant has herein amended to claim to include the further limitation of non-transitory computer readable medium. However, Applicants understand the claim phrase 'non-transitory computer readable medium' to include all tangible mediums of expression, including non-volatile and volatile memory such as RAM. Applicant believes that this overcomes the 101 rejection based on the Office's current interpretation of statutory subject matter. Accordingly, Applicant respectfully requests that the rejection be withdrawn with regard to claim 19, as well as 20-22 which were presumably rejected on the same grounds.

C. REJECTION OF CLAIMS 1-2, 5-8, and 10-22 UNDER 35 U.S.C. §102(b)

With respect to the 35 U.S.C. §102(b) rejection over Spiegel, Applicant asserts that Spiegel does not teach each and every feature of the claimed invention. For example, with respect to independent claims 1, 14 and 19, Applicant submits that Spiegel fails to disclose each and every feature of the currently amended claims. For instance, Spiegel fails to disclose the feature of, *inter alia*, "storing historical data corresponding to operations performed by each of a plurality of users in order to locate an item in the hierarchical structure, wherein the operations

include each level and corresponding category of the hierarchical structure which were navigated by the plurality of users in order to locate the item,” among other features. Applicant has previously argued that Spiegel does not disclose any such storage operation, however has amended the claims for further clarity. In the response to arguments, the Office has stated that Spiegel “describes the storage and analysis of “historical data” in great detail as would be clear from even a cursory glance.” (Office Action, Page 3). However, Applicant asserts that Spiegel does not teach the storage of operations performed in order to locate an item, including each level and corresponding category of the hierarchical structure which were navigated by a plurality of users. Rather, the Office continues to cite Col. 1, Line 60 to Col. 2, Line 4 and Col. 2, Lines 26-36 (Office Action, Page 8), which are simply directed to elevating nodes based on their popularity. This is simply not equivalent to storing historical data corresponding to the specific operations performed by each of a plurality of users in order to locate an item. The cited portion of Col. 6, Lines 5-20 discuss recording and storing which items are browsed or purchased, however this portion still fails to teach or suggest storing the specific actions taken to locate a certain item. Finally, Col. 9 Line 64 to Col. 10 Line 26 of Spiegel, also cited by the Office, discusses keeping a record of all purchases made by a user and if there was any web activity.

Applicant asserts that this is not equivalent to storing the historical data corresponding to operations performed by each of a plurality of users to locate an item in the hierarchical structure. Further, Applicant asserts that the Office fails to address that the data stored includes the specific operations used to locate an item, and vaguely rejects the claim simply based on Spiegel’s storing and elevating nodes, despite clear differences. Thus, Spiegel fails to disclose each and every feature of the claimed invention. Accordingly, Applicant respectfully requests that the Office

withdraw its rejections of independent claim 1, and independent claims 14 and 19 which are rejected on the same grounds, as well as all depending claims.

With regard to the 102(b) rejection of claim 8, Applicant has amended the claim to include a plurality of high frequency items from which the Administrator chooses. In the Response to Arguments, the Office asserts that if there were only one high frequency item, there would be “no determination to be made at all.” Even if, *arguendo*, this statement was accurate, Applicant has amended the claim to state that a plurality of high frequency items are identified. Accordingly, Spiegel fails to disclose the feature of, *inter alia*, “wherein the selection determines which high frequency item of the identified plurality of high frequency items is displayed, if the high frequency item is displayed on a highest level page or the high level page and on which high level page the high frequency item is displayed, and wherein the selection can comprise an item that is not a high frequency item to be displayed on the highest level page or the high level page.” Of the passages of Spiegel cited by the Office for the original feature, only Col. 15, Lines 10-25 are relevant to an Administrator. However, Spiegel discloses that the Administrator can tune the system by changing the weighting of different user activity, such as the tracking of whether a selection is click-through, purchase, search, rating, or added to a shopping cart. Clearly, the Administrator is only weighting actions, and not selecting which high frequency item of a plurality of high frequency items is to be displayed and at what level. Accordingly, Spiegel fails to disclose each and every feature of independent claim 8. Applicant respectfully requests that the Office withdraw its rejection of claim 8 and all depending claims.

With respect to dependent claims, Applicant herein incorporates the arguments presented above with respect to the independent claims from which the claims depend. Furthermore,

Applicant submits that all dependant claims are allowable based on their own distinct features. Since the cited art does not teach each and every feature of the claimed invention, Applicant respectfully requests withdrawal of this rejection.

IV. CONCLUSION

In addition to the above arguments, Applicant submits that each of the pending claims is patentable for one or more additional unique features. To this extent, Applicant does not acquiesce to the Office's interpretation of the claimed subject matter or the references used in rejecting the claimed subject matter. Additionally, Applicant does not acquiesce to the Office's combinations and modifications of the various references or the motives cited for such combinations and modifications. These features and the appropriateness of the Office's combinations and modifications have not been separately addressed herein for brevity. However, Applicant reserves the right to present such arguments in a later response should one be necessary.

In light of the above, Applicant respectfully submits that all claims are in condition for allowance. Should the Examiner require anything further to place the application in better condition for allowance, the Examiner is invited to contact Applicant's undersigned representative at the number listed below.

Respectfully submitted,

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